



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II  
26 FEDERAL PLAZA  
NEW YORK, NEW YORK 10278

JAN 31 1991

EXPRESS MAIL  
RETURN RECEIPT REQUESTED

Mr. John Sweeney  
Nelson Galvanizing, Inc. and  
Nelson Foundry, Inc.  
11-02 Broadway  
Long Island City, New York 11106

Re: Request for Consent for Access  
Nelson Galvanizing facility

Dear Mr. Sweeney:

I am writing to follow up the telephone call of January 29, 1991 between you, Paul Kahn, On-Scene Coordinator with the Emergency and Remedial Response Division of the United States Environmental Protection Agency ("EPA") and the undersigned and the subsequent telephone call of January 29, 1991 between you and the undersigned. You were called in your capacity as an officer of Nelson Galvanizing, Inc. and/or Nelson Foundry, Inc. (the "Companies") in connection with the facility owned or operated by the Companies and located at 11-02 Broadway, in the County of Queens, City and State of New York (the "Nelson Galvanizing Facility" or the "Facility").

The United States Environmental Protection Agency ("EPA") is charged with responding to the release or threatened release of hazardous substances, pollutants, and contaminants into the environment and with enforcement responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601 et seq. EPA has reason to believe that there is a release or threat of release of hazardous substances, pollutants or contaminants at or from the Facility, and has determined that a response action is necessary at the Facility.

During our January 29, 1991 telephone conversations, you were advised that EPA intended to conduct a removal action at the Facility and that EPA could not allow the Companies to carry out the needed actions since EPA was not able to determine that the actions could be properly and promptly done by the Companies. Therefore, the Companies should not undertake the removal or disposal of any hazardous substances, pollutants or contaminants without the written approval of EPA. You were further advised that EPA intends to take the needed response actions at the Facility and you were requested to provide consent for access so

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that EPA could undertake those actions. Despite EPA's request, you did not express any willingness, on behalf of the Companies, to grant access to EPA.

Pursuant to Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3) EPA is authorized to enter a facility in order to, among other things, conduct a response action.

You were further advised in our January 29, 1991 telephone conversations that the response actions EPA intended to conduct at the Facility would include a removal action to address the hazardous substances, pollutants and contaminants stored at the Facility in drums, open tanks and bins which have been released into the environment or which represent a threat of release into the environment and which are an imminent and substantial danger to the public health and welfare. You were also informed that the response action would include securing the Facility with appropriate enclosures and locks; moving or removing debris to determine whether there are drummed hazardous substances, pollutants or contaminants below such debris; preparing an inventory and waste profile of the chemicals at the Facility; staging, bulking and shipping for disposal, or treating on-site and disposing of hazardous substances, pollutants and contaminants.

By this letter, EPA reiterates its request for access needed to perform the above described response action at the Facility. For reasons including risks to health and safety posed by the proximity of the process operations at the Facility to the area where the response activities will be undertaken, the deteriorated state and precarious placement of barrels containing hazardous substances, the debris blocking ingress and egress to the Facility in the event of any emergency, and the dilapidated condition of the Facility itself, EPA access will require the exclusion of the Companies and all persons claiming right of access by or through the Companies from the Facility during the time of the performance of the removal action. Due to the exigent nature of conditions at the Facility, access is needed as soon as possible so that EPA may undertake the response action. EPA estimates that the removal action will take approximately five months to perform.

Enclosed is a "USEPA Consent to Access" form which may be signed and returned to EPA to memorialize the Companies' consent to access. This form should be returned by express mail or other expedited means of delivery so as to reach EPA by 4:00 P.M. Monday, February 4, 1991. If you do not return the form within the time requested, EPA will conclude that you have failed to grant consent pursuant to this request.

If the Companies fail or refuse to grant consent pursuant to this request, EPA may seek to enforce its statutory access authority

pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). In addition, a court may assess a civil penalty not to exceed \$25,000 per day for each day of noncompliance for failure to grant entry as required by Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3).

Please send the Consent to Access form to the undersigned at the following address:

Michael A. Mintzer  
Assistant Regional Counsel  
United States Environmental Protection Agency  
Room 437  
26 Federal Plaza  
New York, New York 10278

with a copy to:

Paul Kahn  
MS-211  
Response and Prevention Branch  
Emergency and Remedial Response Division  
United States Environmental Protection Agency  
2890 Woodbridge Avenue  
Edison, New Jersey 08837

In our January 29, 1991 telephone conversation you indicated that the Companies were not represented by an attorney. I urge you to contact me, or should you retain an attorney, to have your attorney contact me at (212) 264-3348 upon your receipt of this letter, if there are any questions regarding its content or otherwise to advise me whether the Companies will grant access by consent.

Very truly yours,



Michael A. Mintzer  
Assistant Regional Counsel  
Office of Regional Counsel

cc: Joseph Hurley, Senior Attorney, Environment and Natural Resources Division, United States Department of Justice

Paul Weinstein, Assistant U.S. Attorney, Eastern District of New York

## USEPA CONSENT TO ACCESS

Name: Nelson Galvanizing, Inc. and Nelson Foundry, Inc.

Address of Facility: 11-02 Broadway, County of Queens, New York City,  
New York

Consent is hereby given to employees, contractors and authorized representatives of the United States Environmental Protection Agency ("EPA") for immediate entrance and continued access to the above described facility for the following purposes:

- taking such action as determined to be necessary or appropriate to secure the facility including boarding, fencing, changing locks and otherwise restricting access;
- moving or removing debris to determine whether there are drummed hazardous substances, pollutants or contaminants underneath;
- preparing an inventory and waste profile of the chemicals at the facility;
- staging, bulking and shipping for disposal, or treating on-site and disposing of materials;
- taking such other action as may be determined to be necessary or appropriate to perform a removal action, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601 et seq.

The undersigned acknowledges that EPA has determined that access to the facility will require the exclusion of the undersigned and all persons claiming right of access by or through the undersigned from the facility during the time of the performance of the removal action and consents to comply with such requirement.

Consent for access is given by the undersigned voluntarily with understanding of the right to refuse and without threats or promises of any kind.

Date: \_\_\_\_\_

Signatures:

Nelson Galvanizing, Inc.

Nelson Foundry, Inc.

By \_\_\_\_\_

By: \_\_\_\_\_